

PATENT COOPERATION TREATY

From the:
INTERNATIONAL SEARCHING AUTHORITY

To:

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PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Date of mailing
(day/month/year) 30 MAY 2005

Applicant's or agent's file reference
519502 NJC

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/NZ2005/000069

International filing date (day/month/year)
5 April 2005

Priority date (day/month/year)
5 April 2004

International Patent Classification (IPC) or both national classification and IPC
Int. Cl. ⁷ A61B 1/313

Applicant

FISHER & PAYKEL HEALTHCARE LIMITED et al

1. This opinion contains indications relating to the following items:

- | | | |
|-------------------------------------|--------------|--|
| <input checked="" type="checkbox"/> | Box No. I | Basis of the opinion |
| <input type="checkbox"/> | Box No. II | Priority |
| <input type="checkbox"/> | Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability |
| <input type="checkbox"/> | Box No. IV | Lack of unity of invention |
| <input checked="" type="checkbox"/> | Box No. V | Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/> | Box No. VI | Certain documents cited |
| <input type="checkbox"/> | Box No. VII | Certain defects in the international application |
| <input checked="" type="checkbox"/> | Box No. VIII | Certain observations on the international application |

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

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Box No. I Basis of the opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material
☐ a sequence listing
☐ table(s) related to the sequence listing
 - b. format of material
☐ in written format
☐ in computer readable form
 - c. time of filing/furnishing
☐ contained in the international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims 2 to 12, 16, 18, 19, 22 to 72 and 74	YES
	Claims 1, 13, 14, 15, 17, 20, 21 and 73	NO
Inventive step (IS)	Claims	YES
	Claims 1 to 74	NO
Industrial applicability (IA)	Claims 1 to 74	YES
	Claims	NO

2. Citations and explanations:

The following documents identified in the International Search Report have been considered for the purposes of this report:

D1 US 2002/0022762 A1 (BEANE et al.) 21 February 2002

Novelty (N)

D1 discloses the features of at least claims 1, 13, 14, 15, 17, 20, 21 and 73. Therefore the subject matter of these claims is not new and does not meet the requirements of Article 33(2) PCT with regard to novelty.

Inventive Step (IS)

Claims 1, 13, 14, 15, 17, 20, 21 and 73 also lack an inventive step for the reasons given above.

Furthermore it is considered that the features added by appended claims 2 to 12, 16, 18, 19, 22 to 72 and 74 relate to arrangements that are merely matters of design choice when the general technical knowledge about the state of the art is used and hence they cannot contribute to providing a patentable inventive step.

Therefore the subject matter of all of claims 1 to 74 is obvious and does not meet the requirements of Article 33(3) PCT with regard inventive step.

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Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

Claims 1, 22, 34 and 49 are not clear with regard to the definition "a protrusion extending from the upper surface, sized and shaped to receive the lens portion of said optical instrument". A "protrusion" is an outwardly extending member whereas the definition "to receive the lens portion" requires the converse. It would appear from the drawings that a cavity rather than a protrusion is being referred to.

Claims 1 and 49 are not clear with regard to the definition "a heating element ... thermally coupled to said insulation layer" as this would appear to be of no effect. It may have been intended that the heating element be thermally coupled to the protrusion.

Claim 22 is not clear with regard the definition "a material coating the central circular protrusion" which sides of the protrusion are intended.

Claim 49 is not clear with regard to how the arrangement for warming defined at lines 12 to 14 of the claim relates to the protrusion or the laparoscope.

Pursuant to the above observations, claims 1, 22, 34 and 49 are generally unclear with regard to the working inter-relationships of the integers defined.